Schrock Cabinet Company, a wholly owned subsidiary of Masterbrand Cabinets, Inc. *and* United Steelworkers of America, Local Union No. 5163, AFL–CIO–CLC. Cases 25–CA–27296–1 and 25–CA–27378–1

May 30, 2003

DECISION AND ORDER

BY MEMBERS SCHAUMBER, WALSH, AND ACOSTA

On August 14, 2001, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel also filed limited exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, limited exceptions, and briefs[1] and affirms the judge's rulings, findings,[2] and conclusions and adopts the recommended Order.[3]

We adopt the judge's findings that the Respondent violated Section 8(a)(1) of the Act by Supervisor Gary Gifford's threats to employees on December 4, 8, or 13, and 22, 2000.[4] We also adopt, as explained below, the judge's findings that the Respondent violated Section 8(a)(3) and (1) of the Act by the disciplinary action taken by Gifford against employee Denise Stephenson on January 3, 2001.[5] For the reasons stated by the judge, we also find the 8(a)(5) violation regarding the Respondent's failure to provide the Union with certain information it requested regarding outside contracts for saw work, cleaning of restrooms and breakrooms, and painting of restrooms.[6]

The relevant facts involving Stephenson, an assembly specialist, are as follows. She often left her work area, without permission, to make personal telephone calls, to prepare her lunch before her lunchbreak period began, and to engage in personal talk with coworkers. On a few occasions in October and November 2000, Gifford counseled Stephenson about her conduct. The judge found that on none of these occasions did Gifford discipline her for her unauthorized work breaks, or suggest that his counseling, if disregarded by Stephenson, would result in discipline.

On November 30, 2000,[7] Gifford sent Stephenson home early due to lack of work, before she had completed her scheduled 8-hour shift. On December 4, 2000,

[1] The Respondent has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We have modified the judge's notice in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

[4] Member Acosta finds it unnecessary to pass on the December 4 incident involving Supervisor Gifford and Union Representative Bill Throop because the finding of an additional threat violation would be cumulative and would not affect the remedy.

[5] There were no exceptions to the judge's denial of the motion to defer this 8(a)(3) allegation to arbitration.

[6] However, we disavow the judge's statement, which implies that a company has a duty to ask for a showing of relevance. The burden of showing relevance in circumstances where the requested information is not presumptively relevant rests on the union whether or not a company requests an explanation of the relevance of the request. *Associated Ready Mixed Concrete*, 318 NLRB 318 (1995), enfd. 108 F.3d 1182 (9th Cir. 1997) (when the information sought is not presumptively relevant, the union must demonstrate the relevance of the requested information).

Nevertheless, we agree with the judge that the Union in this case has demonstrated the relevance of the information requested. Specifically, in its first request for information dated July 19, the Union advised the Respondent that it was seeking the information regarding the subcontracting of the specified work to "prepare for the possible processing of . . . grievances." On July 29, the Union reiterated its prior request, again noting that the information sought was necessary for its consideration of potential grievances. Moreover, in that correspondence, the Union specifically designated certain of the subcontracted work as work "performed [sic] by excluded persons," a reference to the title of sec. 3.2.1 of the parties' collective-bargaining agreement, which prescribed limitations on the Respondent's ability to assign work to nonbargaining unit employees. Thereafter, the Union, citing sec. 3.2.1 and other provisions of the parties' collective-bargaining agreement, filed several grievances alleging that the Respondent improperly subcontracted bargaining unit work.

It is well established that "an employer is obligated to provide information which is relevant to a union's decision to file or process grievances." *Beth Abraham Health Services*, 332 NLRB 1234 (2000) (citations omitted). Moreover, an employer is required to provide such information regardless of the potential merits of any particular grievance. See *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994).

As evidenced by the Union's above-referenced correspondence to the Respondent in this case, the Union repeatedly advised the Respondent that it requested the information at issue for the purpose of assessing potential grievances pursuant to the parties' existing collective-bargaining agreement. Accordingly, the Union satisfied its burden to demonstrate the relevance of the requested information.

No exceptions were filed to the judge's finding that the Respondent did not violate Sec. 8(a)(5) by failing to provide the Union with information regarding the amount paid to the subcontractors' employees or by its delay in turning over information in response to the Union's request for a job description for a maintenance mechanic technician position. Nor were exceptions filed to the judge's decision not to order Respondent to provide information the Union had requested regarding grievances that had been dropped or settled at the time of the hearing.

[7] The judge incorrectly stated in the sixth paragraph of his decision that Stephenson was sent home early from work on December 1. The record indicates that this event occurred on November 30.

Throop complained to Gifford on Stephenson's behalf that someone else had performed Stephenson's duties after she left work on November 30, and therefore she should not have been sent home early. In response to this complaint, Gifford told Throop that he could tell Stephenson to go ahead and file a grievance, but if Gifford tells her to do something in the future and she doesn't do it right away, he would write her up.

On either December 8 or 13, 2000, Gifford called Throop into his office and said:

> I am going to tell you right now if you file a grievance for Denise Stephenson I am going to write her up every time I catch her doing anything wrong, I am going to write her up. If I catch her talking to Ray Jones I am going to write her up. If I catch her on the telephone I am going to write her up. If I catch her cooking during working hours I am going to write her up. If I tell her to do anything at all and she doesn't do it as soon as I tell her I am going to write her up.

On December 21, 2000, Gifford attempted to send Stephenson home early, but she pointed out to him that another employee with less seniority was still working and she wanted to stay to perform that person's work. Gifford allowed Stephenson to exercise her seniority rights and remain at work. The next day, December 22, Gifford held a meeting with employees in which he informed them that when they returned to work after the holiday break things were going to change and he was going to play "hardball." He informed the employees that if he had to live by the contract he would start enforcing the contract more strictly and they would have to live by the contract too. Gifford said he would make the employees' lives miserable, saying "especially you, Denise" or "thanks to Denise."

On January 2, 2001, the first day of work after the holiday break, the Union filed a grievance alleging that the Respondent had violated the contract because Gifford had inappropriately sent Stephenson home early on November 30 and December 21, and had singled her out and humiliated her at the group meeting on December 22. The following day, on January 3, Stephenson left her work area and used Gifford's telephone without permission. When Gifford discovered this, he disciplined Stephenson by giving her a verbal "coaching" for taking an unauthorized break.

The judge found that the General Counsel met his initial burden under *Wright Line*,[8] of showing that Stephenson's protected activity was a substantial or motivating factor in the disciplinary action taken against her on January 3 because Gifford had tolerated Stephenson's rule violations until she began to engage in protected activity. The judge then found that the Respondent failed to meet its *Wright Line* burden of showing that Stephenson would have been disciplined even if she had not engaged in the protected conduct. The judge found that Gifford's newly adopted tougher policy and the discipline of Stephenson were directly linked to Stephenson's and the Union's exercise of rights contained in the collective-bargaining agreement. The Respondent excepts to this finding, arguing, inter alia, that Stephenson had been previously warned about taking unauthorized breaks, and the disciplinary action was legitimate given Stephenson's disregard for the Company's work rules.

In *La Reina, Inc.*, 279 NLRB 791 fn. 2 (1986), enfd. 823 F.2d 1552 (9th Cir. 1987), the Board held that an employer's stricter enforcement of a work rule 1 day after a representation election and shortly after the employees' organizing activities was retaliatory and violated Section 8(a)(3) and (1) of the Act. Similarly, in this case Gifford took disciplinary action against Stephenson for taking an unauthorized break only 2 workdays after announcing his new stricter enforcement policy, and the day after Stephenson filed a grievance regarding Gifford's actions. Indeed, the timing of Stephenson's discipline, coming on the heels of Gifford's unlawful threats and Stephenson's filing of a grievance, supports the judge's finding that, under *Wright Line*, Stephenson's protected conduct was a substantial or motivating factor in the disciplinary action taken against her on January 3. We agree with the judge that, while the Respondent lawfully could have disciplined Stephenson for taking an unauthorized break, the Respondent failed to prove that it actually would have done so absent her protected activity. Gifford's statements during the December 22 meeting linked his decision to more strictly enforce the work rules to Stephenson's protected activity. Therefore, Respondent has not established an affirmative defense under *Wright Line*, and we find the 8(a)(3) violation.

Our finding in this regard does not alter or undermine an employer's authority to implement or enforce work rules. See *La Reina*, 279 NLRB at 791 fn. 2. Nor does it cast doubt on an employer's ability to *more strictly enforce* its work rules. An employer's more stringent enforcement of its work rules will not constitute a violation of the Act unless it is a consequence of employee participation in protected activity. The existence of protected activity alone, however, does not foreclose an employer from more strictly enforcing its work rules, even where the employer previously tolerated infractions of those

[8] 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399–403 (1983).

rules. See, e.g., *Fire Fighters*, 304 NLRB 401, 431–432 (1991) (oral warning to chief shop steward/chief negotiator for violation of more stringently enforced attendance rule not violative, where employer answered the General Counsel's prima facie evidence of discrimination by establishing that the warning would have been issued even absent union activity). A violation of the Act will be found, however, where—as in this case—an employer more strictly enforces a work rule in response to protected activity.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Schrock Cabinet Company, a wholly owned subsidiary of Masterbrand Cabinets, Inc., Richmond, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY THE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discipline for filing grievances pursuant to the collective-bargaining agreement with Local Union No. 5163, United Steelworkers of America, AFL–CIO–CLC (Union).

WE WILL NOT threaten you with more strict enforcement of company policies or the collective-bargaining agreement in retaliation for our employees' enforcement or attempted enforcement of the collective-bargaining agreement.

WE WILL NOT issue disciplinary actions to our employees in retaliation for their attempts to enforce the collective-bargaining agreement with regard to seniority, or for engaging in other protected concerted activities.

WE WILL NOT refuse to bargain in good faith with the Union by failing and refusing to provide it with information it requests, which information is necessary and relevant to administer the collective-bargaining agreement between the Union and us.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the corrective action documentation issued to Denise Stephenson on January 3, 2001, and WE WILL within 3 days thereafter notify her in writing that this has been done and that the reprimand will not be used against her in any way.

WE WILL, within 14 days from the date of this Order, provide the Union the relevant information it requested on September 27, 2000, to wit, the number of hours worked by contractors in 2000 in painting the restrooms used by bargaining-unit employees.

SCHROCK CABINET COMPANY, A WHOLLY OWNED SUBSIDIARY OF MASTERBRAND CABINETS, INC.

Steve Robles, Esq., for the General Counsel.

Mark J. Romaniuk, Esq. and *John T.L. Koenig, Esq.* (*McHale, Cook & Welch, P.C.*), of Indianapolis, Indiana, for Respondent.

William Throop, Union President and *Chairman*, for the Charging Party.

DECISION

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. The complaint alleges that Respondent Schrock Cabinet Company, a wholly owned subsidiary of Masterbrand Cabinets, Inc. violated the Act by disciplining employee Denise Stephenson and refusing to furnish information requested by Charging Party United Steel Workers of America, Local Union No. 5163, AFL–CIO–CLC (Union). Respondent denies that it violated the Act in any manner.[1]

Respondent, a corporation with an office and principal place of business in Richmond, Indiana, is engaged in the manufacture and sale of kitchen and bathroom cabinetry. During the 12 months ending September 30, 2000,[2] Respondent purchased and received goods valued in excess of $50,000 from points outside Indiana. I conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, which represents about

[1] The charge in Case 25–CA–27296–1 was filed on October 19, 2000, and the charge in Case 25–CA–27378–1 was filed on December 28, 2000, and amended on February 28, 2001. The amended consolidated complaint was issued on March 28, 2001. This case was tried in Indianapolis, Indiana, on June 4 and 5, 2001.

[2] All dates are in the year 2000, unless otherwise stated.

250 of Respondent's employees and has a collective-bargaining agreement with Respondent, is a labor organization within the meaning of Section 2(5) of the Act.

My recitation of the facts involving Stephenson requires an assessment of the credibility of the witnesses whose testimony was not always completely consistent and reliable. I have fully reviewed the entire record and carefully observed the demeanor of all the witnesses. I have also taken into consideration the apparent interests of the witnesses; the inherent probabilities in light of other events; corroboration or the lack of it; and the consistencies or inconsistencies within the testimony of each witness and between the testimony of each and that of other witnesses with similar apparent interests. Testimony in contradiction to that upon which my factual findings are based has been carefully considered but discredited. See generally *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962).

My findings are based in part on the admissions contained in the precomplaint investigatory affidavit that team leader Gary Gifford, Stephenson's immediate supervisor, gave to the Regional Office, portions of which he attempted to avoid or sidestep at the trial, as well as his testimony at the hearing, in which he demonstrated his frustration at and irritation with the fact that he had permitted Stephenson to break Respondent's rules, without disciplining her, and, instead of her being grateful for his forbearance, she sought to hold him fully accountable for any small violation of the contract that he may have committed. And so he decided to change his way of dealing with her, as well as the rest of the employees. No longer would he be "Mr. Nice Guy." Instead, if Stephenson chose to enforce the agreement against him for any violation, he would enforce the rules of the contract against her.

Despite the fact that there were two authorized 10-minute breaks, in addition to a half-hour lunch period, that employees could take during their workday, Stephenson freely admitted being away from her work area to make telephone calls, to prepare lunch before the beginning of the lunch period, and to visit and talk to friends. This conduct seems to have been generally tolerated, as others engaged in it, too; but Gifford was not always completely tolerant. There were occasions in October and November when he counseled Stephenson about her conduct. Stephenson recalled being reprimanded once or twice about being out of her work area and being told to remain by a steel pole when she had completed her job and had nothing to do. Larry Sandlin, her union steward, recalled two conversations about Stephenson heating food in the microwave and, in the second conversation, talking with her friend, Ray Jones, with Gifford cautioning that she had to stop it. On none of these occasions did Gifford discipline her or suggest that his counseling, if disregarded, would result in discipline.

On December 1, Gifford sent Stephenson home early and assigned another employee with less seniority to perform work that Stephenson believed she should have been assigned. On December 4, Throop complained to Gifford:

> I asked Mr. Gifford why he had sent Denise home early when she still had work left to do and he said she didn't really have that much work to do. And I said well it doesn't really matter how much work she had to do it was that it was her job and she should have been the one doing it.
>
> And I told him it was a violation of—he was in violation of the contract. And he said well it was only an hour and if an hours pay it means it is worth her getting wrote up over it well tell her to go ahead and file a grievance but he said if I tell her to do something and she hesitates I will write her up.

Gifford's response violated Section 8(a)(1) of the Act. He had previously ignored the fact that Stephenson had left work early, but now that the Union threatened the filing of a grievance, patently protected and concerted activity, Gifford countered with the threat to write her up in return for her exercise of Section 7 rights.

On December 8 or 13, Gifford called Throop into his office. Gifford said that he had just finished talking with Kathy Smith, Respondent's human resources manager, and again threatened Stephenson:

> I am going to tell you right now if you file a grievance for Denise Stephenson I am going to write her up every time I catch her doing anything wrong, I am going to write her up. If I catch her talking to Ray Jones I am going to write her up. If I catch her on the telephone I am going to write her up. If I catch her cooking during working hours I am going to write her up. If I tell her to do anything at all and she doesn't do it as soon as I tell her I am going to write her up.

Once again, Gifford violated Section 8(a)(1) of the Act, because he threatened stricter discipline and enforcement of Respondent's rules simply because she had threatened to file a grievance. Indeed, both in his testimony and in his investigatory affidavit, he admitted telling the Union that Stephenson was free to file a grievance; but, if she did, he would have no recourse other than to follow the steps that he was supposed to take, steps that he was not going to take had Stephenson not complained, and that was to administer discipline to her. There was "no need for a grievance," and concomitantly, "no need for her to get written up." Filing a grievance or assertion of a contractual right is a protected activity, and threatening an employee, through the Union, with stricter enforcement of Respondent's rules if a grievance is filed violates the Act.

On December 21, Gifford sent Stephenson home early, but she replied that Tammy Clouse, an employee with less seniority, was still working; and Stephenson wanted to remain at work and perform the work. Gifford allowed Stephenson to exercise her seniority rights, but appeared aggravated in doing so, saying "well I guess you will get to stay and work anyhow, won't you?" The following day, he called a meeting of the employees. What he said was narrated by five different people, including Gifford, and none of them recalled the same content. But three, Stephenson, Sandlin, and employee Doug Ogden, recalled that Gifford made specific reference to Stephenson by her first name, two blaming her for what was his message: that what had happened regarding Stephenson was not going to happen again. The essence of his speech was that after the first of the year (for the employees were about to leave for yearend vacation) things were going to change, Gifford was going to play "hardball." If he had to live by the contract, the employees would, too. He would make their lives miserable, "espe-

cially you, Denise" or "thanks to Denise." All this was due to Stephenson's assertion of a perceived contractual right the day before, if not the Union's prior assertions of Stephenson's contractual rights and the Union's stated intent to file grievances, all of which were protected. Gifford, on the other hand, was going to take a different attitude because of those protected activities, and his threats to do so again violated Section 8(a)(1) of the Act.[3]

In fact, after Christmas break, he began to enforce his stricter policy, but not before the Union filed a grievance on January 2, 2001, stating:

> Denise was sent home several times in which she did not get her 8-hour work in on these dates 11-30-00 and 12-21-00. The Union feels that this was because she was being herrast [sic] by her team leader. In which at a group meeting on 12-22-00 she was singled out and was humilated [sic] in front of all other employees.

The settlement that Throop requested was: "To be paid all hours due her and to be treated with respect and dignity. Be made whole in all ways."

Thus, when, on January 3, 2001, Stephenson left her work area and used Gifford's telephone without permission, Gifford issued her a "corrective action documentation," reflecting a verbal coaching, the first step in Respondent's progressive disciplinary policy. I find that the General Counsel has established a prima facie 8(a)(3) case under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Naomi Knitting Plant*, 328 NLRB 1279, 1281 (1999); *Manno Electric*, 321 NLRB 278, 280 fn. 12 (1996). In the face of a history of toleration of Stephenson's violations of minor rules, once she and the Union on her behalf began to engage in protected activities, and when the Union filed the grievance that it had threatened to file, Gifford's attitude turned to one of retaliation, not only against Stephenson but against all the employees. Stephenson gave him an opportunity to use his newly found "hardball" first. Gifford testified that he was unaware that the Union had filed its grievance the day before, but I find that improbable. Gifford testified that he was aware that Stephenson wanted to file a grievance against him, so he consulted with Plant Manager Dan Colley before giving her a warning because he "did not want her to think that [he] was doing this in retaliation of her filing a grievance."

The only question that remains is whether Respondent has proved under *Wright Line* that, absent the Union's and Stephenson's protected activities in filing and threatening to file grievances and insisting on compliance with the collective-bargaining agreement, Gifford would still have disciplined Stephenson. I find that Respondent has failed to make that showing, despite the fact that there was ample evidence that Stephenson had little regard for the Respondent's rules. Everything that Gifford did was directly linked to Stephenson's and the Union's exercise of rights contained in the collective-bargaining agreement, and for no other reason. In fact, Gifford identified Stephenson at the December 22 meeting as the person responsible for his newly adopted tougher policy.

Although there might have been justification for the discipline not only after the Christmas break but also before, Respondent did not prove that Gifford would have finally abandoned his policy of toleration of employees' failures. Respondent's defense that it had an established policy of looking out for employees taking unauthorized breaks is meaningless in light of Gifford's consistent disregard of Stephenson's failings, at least to the extent of formally disciplining an employee. Respondent's attempt to show that it has treated two other employees in the same manner as Stephenson are distinguishable. If one employee was disciplined for taking an unauthorized break—and the record of his discipline was not introduced in evidence—it apparently was more important to Gifford that the employee was smoking. As Gifford explained, "Nowhere in the plant are you authorized to smoke and at the time it was not during his break, he had gone to the restroom presumably and he wasn't using the restroom he was standing off in the corner of the restroom smoking a cigarette." With respect to the other employee, he was disciplined after Gifford had changed his policy as a result of the Union's and Stephenson's protected activities. I thus conclude that Respondent violated Section 8(a)(3) and (1) of the Act by disciplining Stephenson.

In doing so, I deny Respondent's motion to defer to arbitration the unfair labor practice allegations concerning Stephenson pursuant to *Dubo Mfg. Corp.*, 142 NLRB 431 (1963). Mike Schmitt, the senior director of labor and employee relations for Respondent's parent corporation, understood the second part of the grievance to involve the fact that Gifford had singled Stephenson out in a meeting that he held with all of his employees and that was inappropriate. Schmitt denied the grievance because "It indicated that she wasn't singled out, she had volunteered during the meeting that he was talking about her." I read the grievance in the same way. The other part of the grievance alleges Respondent's failure to give Stephenson 8 hours of work. Neither part of the grievance concerns what is at issue in this unfair labor practice proceeding, including Gifford's earlier unlawful conduct; and the entire grievance seeks relief that is not sought in this proceeding. Accordingly, the arbitration proceeding will not resolve any of the disputes raised by the unfair labor practice complaint.

[3] Gifford admitted the essence of this violation: he told the employees that recent events had made it clear that providing employees some discretion, in fact flexibility, was apparently counterproductive; that they were taking advantage of his informal management approach unless it did not directly benefit their individual situation; if it did not directly benefit their individual situations, the employees wanted to strictly and technically interpret the collective-bargaining agreement; and that every minor incident resulted in threats and formal grievances rather than cooperation and informal resolution. He would now do the same. That would mean a reduced leniency on his part with employees who failed to complete their duties or otherwise failed to meet the standards expressed in the contract and company policies. That was exactly what he wished to impart:

> The reason for holding that meeting was it had—basically over the period of four to five months it seemed like every time I tried to be nice or do something that wasn't getting any of the employees in trouble they would come back and hold my feet to the fire to the letter of the law so to speak, and it needed to come to a screeching halt.

The remaining allegations concern Respondent's failure to provide to the Union information that, the complaint alleges, was arguably necessary and relevant to the Union's function as collective-bargaining agent for the unit employees. On July 19, Throop requested that Respondent supply "information to prepare for the possible processing of two grievances." Regarding the first, he wanted a list of each occasion that Respondent subcontracted saw work, such as the sawing of plywood drawer bottoms, since January 1; the names of each contractor that performed bargaining unit work since January 1; and copies of all correspondence and contracts between Respondent and those contractors. Regarding the second, he wanted copies of all correspondence and contracts between Respondent and J&J Janitorial Services. Those related to the subcontracting of the cleaning of Respondent's restrooms and breakrooms. Throop asked that the material be provided by July 25 and added that if Respondent refused to turn over any of the material or if any material was unavailable Respondent should provide the remaining items as soon as possible.

On July 24, Ray Mooney, then Respondent's human resources manager, replied that he had received Throop's July 19 request and was "preparing an appropriate response." On July 28, Mooney responded to the Union's demand for information: (1) "The Company is presently utilizing a contractor to provide professional cleaning of restrooms and breakrooms as well as office areas" and (2) "The Company periodically utilized a contractor to cut drawer bottoms when plant capacity has been exceeded or there have been other production problems." On July 29, Throop replied:

> On July 19, 2000, I sent you a letter asking for specific information concerning subcontracting bargaining work by the Company, Your letter dated July 28, 2000 never answered that request in any capacity, are you refusing the Union's request? If you refuse to answer this question it will be my understanding that your answer is yes.

On the same day, Throop sent yet another letter asking for the following information to prepare for the cleaning and saw work subcontracting grievances, which Throop referred to as "work preformed [sic] by excluded persons": (1) The amount of all hours paid to contractors; (2) the hourly or contractual wages paid to the contractors; and (3) the dates on which the work was performed. Although Throop received no answer from Respondent, on August 2, he filed a grievance complaining that Respondent contracted out bargaining unit work, the cleaning of the restrooms and breakrooms, and asked as relief that Respondent pay all lost hourly rate pay and make the Union whole, relying on sections 4.1.1 and 3.2.1 (as well as "all others that apply") of the collective-bargaining agreement.

Throop filed yet another grievance on August 21, this time complaining that Respondent had used outside contractors to paint the restrooms used by unit employees. The grievance relied on section 3.2.1 (as well as "all others that apply") and requested that Respondent make the Union "whole in all ways." The Union also filed another demand for information. When the Union failed to obtain relief at the first step of its grievance procedure, Throop wrote to Kathy Smith on September 27 to obtain for a step-2 grievance discussion information regarding the hours worked by and hourly wage paid to the contractors hired to paint the restrooms. Smith denied the request on October 2:

> [F]or the reason that the information requested is not relevant to the processing of the grievance. Specifically, it is undisputed that the company retained an outside contractor to paint the restrooms. The Union contends in its grievance that the use of an outside contractor violates the terms and conditions of the CBA. Information concerning the number of hours worked by the contractor and the contractor's rate of pay are not relevant or necessary to the processing of this grievance. The information the Union has requested pertains to the issue of damages in the event there is a determination that the company violated the CBA. If the Union is able to successfully establish that the company violated the CBA, the company will agree to provide information in its possession relevant to the Union's request for the purposes of remedying the alleged violation.

Respondent contends, perhaps correctly, that the collective-bargaining agreement does not prohibit subcontracting; that work had been subcontracted for years; and that there was a special need to subcontract the work at issue, because the contract limited overtime and the hiring of temporary employees. Throop, while admitting that the contract did not prohibit subcontracting, testified that Respondent never subcontracted work which the employees were capable of performing or had the necessary machinery to perform. Inherent in its grievances was the claim that the subcontracting of work was depriving the employees of their employment standards and opportunities for employment by Respondent. The Union also relied on a section of the agreement entitled "Work by Excluded Persons," that provided that Respondent's intention is not to assign jobs covered by the agreement to nonbargaining unit employees except in five certain situations, one of which is "[e]mergencies (defined as serious unforeseen circumstances which could materially affect plant operations)." That section adds that, if there is a violation of the agreement, and the employee (presumably the one who lost work) can reasonably be identified, Respondent shall pay that employee a minimum of 2 hours' pay or the actual amount of time lost at regular straight time paid. Respondent contends that this provision was intended solely to prohibit members of supervision and management from performing bargaining unit work.

Either of the parties to the agreement may be correct. However, whether there are violations of the contract is not what this proceeding is about and not what the Act is concerned with. *Southeastern Brush Co.*, 306 NLRB 884, 884 fn. 1 (1992). The proceeding is about the Union's right to obtain information to aid it in the grievance procedure, which Mooney acknowledged "was the way to resolve whatever differences we might have had." *Bethlehem Steel Corp.*, 197 NLRB 837 (1972). Once the Union has the right to utilize the grievance machinery, including arbitration, it has the right under the Act to obtain information about its complaint. The Board wrote in *Shoppers Food Warehouse*, 315 NLRB 258, 259 (1994):

> [I]t is well settled that an employer, on request, must provide a union with information that is relevant to its carrying out its

> statutory duties and responsibilities in representing employees. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). This duty to provide information includes information relevant to contract administration and negotiations. *Barnard Engineering Co.*, 282 NLRB 617, 619 (1987); and *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983).

It need not be shown that the information, if given, would aid the requesting party in advocating its grievance. It may be relevant for the purpose of giving that party information which would dissuade it from wasting its time and money in going forward with a grievance that would not be successful. *NLRB v. Acme Industrial Co.*, 385 U.S. at 437.

The standard of relevancy is very broad when the information sought concerns the terms and conditions of employment within the bargaining unit. A party need not normally show specifically the relevance of what it demands. Rather, relevancy is presumed because the information goes to the core of the employer-employee relationship. The burden thus falls upon the employer to prove a lack of relevance. *San Diego Newspaper Guild Local 95 v. NLRB*, 548 F.2d 863, 867 (9th Cir. 1977). However, the Board has held that information regarding subcontractors is not presumptively relevant. *Sunrise Health & Rehabilitation Center*, 332 NLRB 1234 fn. 1 (2000). The Union must therefore demonstrate the relevance of the information it seeks. *Allison Corp.*, 330 NLRB 1363, 1367 (2000).

Much of the information could be used either to prove the alleged violation or the appropriate relief. The contracts involving the cleaning of the restrooms and breakrooms, requested in Throop's July 19 letter, would show what services were being subcontracted. The correspondence would supplement the dates that the services were to be performed. Similarly, Throop's July 29 request for the dates of the work and the hours paid for are relevant to show what hours of work bargaining unit employees were being deprived of, not only for the purpose of liability but also for the computation of the relief that might be granted. However, the Union did not prove the relevancy of its request for the amounts paid to the contractors. Either the work was done in violation of the contract or not. Whether Respondent paid more or less to its contractors is irrelevant to its liability for a breach of the agreement or to the consideration of the appropriate remedy. *Southwestern Bell Telephone Co.*, 173 NLRB 172 (1968). To the same effect, the Union's demand for the hours worked painting the restrooms are relevant, but irrelevant regarding the hourly wages paid to the subcontractors' employees.

Throop ultimately determined not to file a grievance regarding the saw work. His decision did not relieve Respondent of its responsibility to supply information that might have been helpful to the Union in deciding whether or not to file a grievance. I thus find that Respondent should have produced the same material that it was requested to produce in connection with the cleaning dispute, with the addition of the identity of the subcontractors and the dates that the subcontracting was performed, as requested in Throop's July 19 letter.

Respondent contends that the Union never supplied information about why the demands for information were relevant. However, Respondent never asked. Furthermore, Mooney's July 28 response demonstrated that he was acutely aware of what Throop was complaining about, the subcontracting, as to which he denied that Respondent did anything wrong. Finally, even if that were not so, the actual grievances filed by Throop, showing his reliance on the specific provision of section 3.2.1 of the collective-bargaining agreement, as well as Throop's requested relief, made clear the relevancy of his request. So did Throop's July 29 letter, in which he referred to work performed by "excluded persons," a specific reference to section 3, article 3 of the agreement. Finally, the communications between Throop and Respondent, as well as Throop's discussions with Respondent's representatives, would have "apprised reasonably perceptive persons as to the relationship between the grievances and the requests for information." *Ohio Power Co.*, 216 NLRB 987, 995 (1975), enfd. 531 F.2d 131 (6th Cir. 1976); *Beth Abraham Health Services*, 332 NLRB 1234 at 1234 (2000).[4]

Mooney contended that he did not respond to the demand on July 29 for three reasons, none of which are valid. The first was that he had made an assessment that Respondent had the right to subcontract. That, however, was a matter for the arbitrator to decide. Second, he contended that Respondent had not engaged in subterfuge and that he acknowledged that Respondent had engaged in subcontracting. His admission, however, does little to supply the Union with the proof that it would need before an arbitrator to define the nature of the problem and the scope of the relief. Mooney's third reason was that the Union had often asked for information before and later abandoned its request. Respondent did nothing to prove that contention, which I find unsupported.

Respondent contends that the Union somehow abandoned its demand by not renewing it. I find that contention unsupported as a matter of fact and law. Once the demand was made, it was Respondent's obligation to reply to it appropriately by supplying relevant information. The Union's initial letters established Respondent's duty. The Union had no obligation to renew its demand, once Respondent failed to supply the material. Respondent also contends that, at least as to the saw grievance, it did not violate the Act because Throop did not pursue the grievance. However, the right of the Union to the information it requested must be determined by the situation which existed at the time the request was made. *Mary Thompson Hospital*, 296 NLRB 1245, 1250 (1989), enfd. 943 F.2d 741 (7th Cir. 1991). Finally, Respondent contends that the Union is not entitled to such documents until the arbitrator decides whether there is a breach of the agreement; and that, assuming that the arbitrator holds against the Union, then there is no need for documents to prove damages. The short answer is that most arbitration hearings are not bifurcated in the way that Respondent suggests. One hearing is held, during which all the issues, including liability and relief, are contested. The Union is enti-

[4] I do not credit Throop's testimony that he also wanted the information for the purposes of upcoming contract negotiations. Although that might have further justified his request, he did and said nothing to support this reason.

tled to prepare for those hearings. Accordingly, to the extent that I have found the Union's demands relevant, I conclude that Respondent violated Section 8(a)(5) and (1) of the Act by failing to produce the requested information.

On September 28, Throop, at least so he testified, pursued another line of inquiry. He requested that Respondent supply him, "to prepare for the processing of a possible grievance," the "[j]ob description of Maintenance Mechanic Technician including all necessary qualifications." Smith denied receiving Throop's letter or ever even seeing it, although she received a request from Throop for another job description, the dovetail machine operator, in early December and replied on December 11 by advising that Respondent had previously given the Union committee a job description binder with the job descriptions in it and asked that Throop contact committee members to get the binder. She also advised him that, if he was not able to locate the binder, to let her know. No Union representative, particularly Ogden, the former unit president, denied that the binder existed.

In the meantime, on December 7, Throop, referring to his September 28 letter and stating that he and Ogden had made oral requests for the information, renewed his request for the maintenance mechanic technician job description. Throop's request for the job description was erroneous. There was no such position. There were two positions provided for in the collective-bargaining agreement: a maintenance mechanic and a maintenance technician. Throop combined the two jobs into one. Late in December, Smith gave Throop a copy of the description of maintenance mechanic. Throop did not look at what she gave him for a number of days; and, when he did, he realized that he had not been given what he thought he had asked for. So, several weeks later, Throop brought it back and told Smith that she had given him the wrong description and that he was actually asking for the maintenance technician description. Strangely, Smith did not tell him then that, because Respondent did not employ an employee in that job at the Richmond facility, although it apparently did at its other facilities, a description had never been prepared and that she would have to prepare one. On February 20, 2001, Smith forwarded to Throop the job description for the job of maintenance technician, noting that Respondent employed no one in that position. She reiterated that fact in her testimony and added that the description had just been prepared, in answer to Throop's request, and forwarded to him as soon as it had been approved by Respondent's parent corporation.

The General Counsel complains that Smith never replied to Throop's first letter, but I believe Smith's denial that she received it. As much as Respondent may not have cooperated fully in supplying the information sought by the Union, at least it generally replied and did not wholly ignore Throop's requests. Thus, it replied in a timely manner to Throop's requests for the job classifications of dovetail machine operator and, later, in January 2001, material specialist. Because Throop testified that he delivered some of his requests by leaving them on desks, it is possible that this particular request simply was mislaid or mishandled and never came to Smith's attention. I discredit his testimony that he and Ogden discussed the request with Smith several times after the initial demand was made. First, Ogden never corroborated that testimony. Second, had there been such a discussion, surely someone would have caught Throop's error, asking for the description of a job that did not exist.

From the time that Throop discovered that Smith had not given him the job description that he thought that he had asked for and so told Smith, it took Respondent about 5 weeks to answer his request. In light of the explanation that Respondent had not even prepared such a job description and had to do so, I cannot find in these circumstances that the delay was unreasonable and that its actions constituted an unfair labor practice. I will dismiss this allegation. In doing so, I will not dismiss it for one of the reasons proposed by Respondent in its brief, that all the information requests should be deferred to the grievance and arbitration process, for which Respondent offers no legal authority for this proposition, which seemingly ignores the statutory basis for the violations found. *American Standard*, 203 NLRB 1132 (1973). Furthermore, the Board has long held, "the existence of an arbitration proceeding does not relieve a party from its duty to furnish relevant information requested by the other party." *Teamsters Local 921 (San Francisco Newspaper Agency)*, 309 NLRB 901 at 901 (1992).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, Respondent shall remove all references to its oral warning of Stephenson from her personnel file and notify Stephenson that that has been done. Respondent shall deliver to the Union the relevant documents that Throop requested in his letter regarding the painting of the restrooms grievance. I shall not order similar relief regarding any of the other material that Throop requested. The saw grievance was dropped and the cleaning of the restrooms grievance was settled. The documents sought by the Union had relevance only because Throop wished to pursue certain grievances. Those grievances are no longer extant. The documents have lost their relevance. *Toyota of Berkeley*, 306 NLRB 893, 896, 920–921 (1992); *Westinghouse Electric Corp.*, 304 NLRB 704 fn. 1, 709–710 (1991); *New Jersey Bell Telephone*, 289 NLRB 318, 335 (1988), enfd. mem. 872 F.2d 413 (3d Cir. 1989).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Schrock Cabinet Company, a wholly owned subsidiary of Masterbrand Cabinets, Inc., Richmond, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its employees with discipline for filing grievances pursuant to the collective-bargaining agreement

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

with Local Union No. 5163, United Steelworkers of America, AFL–CIO–CLC.

(b) Threatening its employees with more strict enforcement of company policies or the collective-bargaining agreement in retaliation for its employees' enforcement or attempted enforcement of the collective-bargaining agreement.

(c) Issuing disciplinary actions to its employees in retaliation for their attempts to enforce the collective-bargaining agreement with regard to seniority, or for engaging in other protected concerted activities.

(d) Refusing to bargain in good faith with the Union by failing and refusing to provide it with information it requests, which information is necessary and relevant to administer the collective-bargaining agreement between Respondent and the Union.

(e) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, remove from its files any reference to the corrective action documentation issued to Denise Stevenson on January 3, 2001, and within 3 days thereafter notify her in writing that this has been done and that the reprimand will not be used against her in any way.

(b) Within 14 days of this Order, provide to the Union the relevant information it requested on September 27, 2000, to wit, the number of hours worked by contractors in 2000 in painting the restrooms used by bargaining unit employees.

(c) Within 14 days after service by the Region, post at its facility in Richmond, Indiana, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since July 28, 2000.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

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[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."